

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 96-33**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

The applicability of the sales and use tax to the sale of utility poles.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

The Taxpayer owns and operates a pole and lumber treating plant in Tennessee. Its treated production is marketed and sold predominately within Tennessee. The Taxpayer

is currently charging sales tax on the sale of utility poles to customers who do not furnish the Taxpayer with an exemption certificate.

QUESTION

Whether the sale of utility poles is subject to sales tax.

RULING

The sale of utility poles is not subject to sales tax.

ANALYSIS

The retail sale of tangible personal property in this state is subject to sales tax. T.C.A. Section 67-6-202(a). Tangible personal property means and includes

personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses ‘Tangible personal property’ does not include utility poles, anchors, guys, and conduits, and such facilities shall be deemed to be real property for the purposes of this chapter.

T.C.A. Section 67-6-102(28). The Tennessee Court of Appeals has interpreted this provision to mean that utility poles are not subject to tax, rejecting the argument that the utility poles must be erected or installed and in use before they are deemed real property. *United Inter-Mountain Telephone Co. v. Commissioner of Revenue*, 1994 Tenn. App. LEXIS 107. Under this decision, the sale of utility poles is not subject to sales tax.

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APPROVED: Ruth Johnson

DATE: 10/25/96